

BOOKS RECEIVED.

[All legal works received before the first of the month will be reviewed in the issue of the following month.]

AMERICAN RAILROAD AND CORPORATION REPORTS. Edited and Annotated by JOHN LEWIS. Vol. VII. Chicago: E. B. Myers & Co., 1893.

FORENSIC ORATORY: A MANUAL FOR ADVOCATES. By WILLIAM C. ROBINSON, LL.D. Boston: Little, Brown & Co., 1893.

MISCELLANEOUS REPORTS: CASES DECIDED IN THE INFERIOR COURTS OF RECORD OF THE STATE OF NEW YORK. F. B. DELEHANTY, Reporter. Vol. I. Albany: James B. Lyon, 1893.

BOOK REVIEWS.

By G. W. P.

A NEW MEDICAL DICTIONARY, INCLUDING ALL THE WORDS AND PHRASES GENERALLY USED IN MEDICINE, WITH THEIR PROPER PRONUNCIATIONS AND DEFINITIONS. By GEORGE M. GOULD, B.A., M.D. Philadelphia: P. Blakiston, Son & Co., 1893.

Great as must be the usefulness of such a work as this to the medical man, it is, perhaps, not too much to say that it has an almost equal value for the layman who, in the course of his business, is constantly meeting with medical terms which, but for some such work as this of Dr. GOULD's, would be altogether meaningless. Such is the case of the lawyer, who at every turn in his practice is compelled to grapple with the statements of medical experts as delivered from the witness stand, or as reprinted in the reports. The reports of to-day, indeed, furnish ample corroboration of the truth of this remark, for there seems to be an increasing tendency to draw out for the edification of juries long catalogues of technical terms which are as unintelligible to the lawyer as some of our legal phraseology would be to the physician.

Dr. GOULD's dictionary is published in convenient form, and the "externals"—paper, printing and binding—leave nothing to be desired. The definitions of medical terms are particularly good, for while the language used is in all cases scientifically exact, yet it is sufficiently clear and simple to be readily understood by the layman. The book should have a place in the law library no less important than that which it occupies in the medical library.

G. W. P.

THE GENERAL PRINCIPLES OF THE LAW OF EVIDENCE IN THEIR APPLICATION TO THE TRIAL OF CRIMINAL CASES. By FRANK S. RICE. Rochester, N. Y.: The Lawyers' Co-operative Publishing Co., 1893.

This large volume, of over one thousand pages in all, is the third in the series, of which the first two volumes dealt with the subject of evi-

dence in civil cases. In the work before us the author gives the results of the examination of a vast number of judicial decisions, and he presents these results in a form which is well adapted to the needs of practitioners who have criminal causes to try. Part I discusses criminal evidence in its general relations to the criminal law. Part II discusses the instrumentalities of evidence. Part III exhibits the evidence of the prosecution. Part IV is devoted to defensive evidence. Part V is, the author tells us in his preface, "a somewhat ambitious attempt to simplify and lucidly state the more intricate problems of evidentiary law as found in the trial of specific offenses." If one starts with the assumption that there is such a thing as "criminal evidence," as distinguished from "civil evidence," and with the further assumption that the function of the text-book is merely to photograph a branch of law as it exists to-day without imbuing the reader with the genius of the law or the spirit of its development, then there is little but praise to be accorded to such a work as that of Mr. RICE. It is evident that the cases themselves have been read in the preparation of this book, and that reliance has not been placed upon the syllabuses. The author has a faculty of clear statement, and his style is full, though not prolix.

We are not persuaded, however, that there is such a thing as a law of criminal evidence and a law of civil evidence. It appears to us that there is one law of evidence, and that if the needs of the profession require that separate treatises should be written upon different phases of the same subject, it should be the constant aim of the author to dwell upon the fact that the same principles are applicable to both phases, and that the differences are merely the result of the application of the principles to different branches of substantive law. Then, too, the writer believes that the ideal text-book not only gives the reader all that such a book as Mr. RICE's gives him, but gives him a great deal more, in that it enables him, when he has once caught the spirit of development from a study of cases in chronological order, to take part in the further development of the law by guiding the courts in argument along those lines of progress, the direction of which can be learned with certainty only through a study of the steps by which his law has reached the position which it occupies to-day. With such conceptions as these Mr. RICE does not bother himself. He "studiously avoids any obtrusion of his personal views." His "further endeavor has been to emancipate the text as far as possible from metaphysical discussion and refined theorizing, and to place every assertion beyond the reach of suspicion, by citing in its support the deliberate utterance of some tribunal entitled to respect." The result is that we find the tiresome twaddle which "tribunals entitled to respect" so often indulge in with respect to such subjects as "Presumptions" and "Best and Secondary Evidence." The meaningless rule that the *best evidence* of undisputed facts of which the nature of the case will admit must be produced in every instance, is again and again reiterated. Mr. RICE would probably consider it a metaphysical subtlety to point out that such a rule as this is no rule at all. If it were a rule it would be a rule either of requirement or of permission. If it were a rule of requirement it would be open to the suspicion of dealing with the weight of evidence rather

than with the admissibility of it—of being a rule, not of evidence, but of substantive law; and, looked at as a rule of requirement, it is clear that no such general principle exists in the law in view of the freedom with which substitutionary evidence is permitted in innumerable instances. If it were a rule of permission, then the story of the female lawyer who contended for the admissibility of a piece of hearsay-opinion-evidence on the ground that her chief witnesses were in Europe, and that this was the best she could do under the circumstances, would cease to be a joke, and would become a precedent worthy of a place in the fifth chapter of Mr. RICE's treatise. Such analysis of judicial utterances, however, would, as before pointed out, come under Mr. RICE's condemnation of "refined theorizing," and, therefore, finds no place in his work. The reader sighs for the introduction of a little "metaphysical subtlety" in the discussion of "*Res Gestae*" in the thirteenth chapter. But, if he is not hypercritical, he will overlook these disadvantages and will acknowledge that he owes to Mr. RICE a debt for giving him in such a convenient form a great mass of useful material—a great collection of important cases carefully stated; and he will in the course of his practice often have occasion to turn to Mr. RICE's work for information upon some point which requires immediate decision, and he will be gratified at finding that his want can be so quickly supplied.

G. W. P.

DIGEST OF FIRE INSURANCE DECISIONS IN THE COURTS OF THE UNITED STATES, GREAT BRITAIN AND CANADA, FROM THE EARLIEST PERIOD TO THE PRESENT TIME, WITH REFERENCES TO STATUTORY PROVISIONS. By GEORGE A. CLEMENTS. New York: Baker, Voorhes & Co., 1893.

In the preparation of this digest Mr. CLEMENTS has adopted a method of arrangement suggested by the form of the standard policy which most of the States of the Union, following the lead of New York, have now set forth by authority.

In his preface Mr. CLEMENTS condemns the popular error which leads to the disregard of judicial decisions rendered prior to the adoption of the standard policy, and wisely remarks that a work giving only later or selected cases might not only be incomplete but misleading. Developing the plan thus indicated, Mr. CLEMENTS has collected about seven thousand abstracts or notes, covering the ground in the United States, Great Britain and Canada from the earliest cases to those decided in the first half of the year 1892. "While an occasional life and marine case is cited, this book is designed to be exclusively devoted to fire insurance law."

An examination of the table of contents will make clear the meaning of the statement made above that the arrangement of the work is based upon the form of the standard policy. The policy is set forth in the table of contents section by section—twenty-four sections in all—and following each section are the captions which introduce the subjects suggested by the section which precedes. Thus, following Section I come (1) Premium; (2) Parties or Persons Insured; (3) Term; (4) Amount; (5) Location and Description; (6) Loss or Damage; (7) Parol Contract; (8) Con-

summation of Contract; (9) Insurable Interest; (10) Usage and Custom; (11) Entirety or Divisibility of Contract, (12) Reformation; (13) Construction; (14) Miscellaneous; (15) Statutory Provisions. While such a division undoubtedly has many advantages, it is to be noted that some of the topics here treated can scarcely be said to have been suggested by the language of Section I. It is probable that Mr. CLEMENTS has treated of them in this place merely for the reason that they could be grouped under no other section. In a very few instances, however, the form of arrangement adopted is, perhaps, open to more serious criticism. Thus Section IX of the policy gives occasion for the collection of the cases on the important subject of warranty. The language of Section IX, however, is merely this: "If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured." The treatment of the whole subject of warranty under this section receives so slight a justification from this reference to a particular instance of warranty that it would probably have been better to digest these cases side by side with those upon Concealment, Misrepresentation and Materiality under Section IV.

If Mr. CLEMENT's digest is subjected to a searching test in respect of the accuracy of the abstracts of the cases, and in respect of the completeness of the cross-references, it will not be found wanting. The digests or abstracts are unusually concise, and they seem to be correct statements of the several decisions. The reviewer has read with approval and satisfaction the statements of cases with which he happens to be familiar, and in several instances has referred to the original report in order to pronounce a worthy judgment upon the work. While often the abstracts are, it is true, mere reprints of the syllabuses of reported cases, yet in many instances defective syllabuses have been modified and corrected, and in many more instances new and original abstracts have been substituted for them. The cross-references, which are in every instance collected together in the concluding paragraph of a section or sub-section, are full and reasonably complete.

The reader will note with surprise, however, and not without a feeling of vexation, that the table of cases possesses the unusual fault of defective alphabetical classification under the various letter-headings. Cases are printed in an order which disregards the alphabetical sequence of all letters after the second in the name of plaintiff or defendant. Thus for example, under R, *Rathbone v. Ins. Co.* precedes *Rankin v. Ins. Co.*, which in its turn is followed by *Rafferty v. Ins. Co.*, and this by *Rafael v. Ins. Co.* Those next in the list are as follows: *Rapp v. Ins. Co.*, *Rayner v. Preston*, *Rackley v. Scott*, *Race v. Ins. Co.*, etc. Enough has been said to show that one who consults the table of cases for the purpose of finding abstracts of a particular decision may be compelled to search through a long list of cases with but little of the assistance which he is accustomed to receive from the proper classification of names.

The work is provided with an appendix which contains the Massachusetts standard policy and the New Hampshire standard policy. The index is reasonably complete, and, so far as the reviewer has been able to test it, is accurate.

G. W. P.